

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs November 14, 2007

**STATE OF TENNESSEE v. THOMAS ANDERSON, JR.**

**Appeal from the Circuit Court for Williamson County**  
**No. I-398-102-B Timothy L. Easter, Judge**

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**No. M2007-01040-CCA-R3-CD - Filed January 8, 2008**

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The Appellant, Thomas Anderson, Jr., appeals from the Williamson County Circuit Court's order denying his motion to receive pretrial jail credit. The Appellant contends that, pursuant to Tennessee Code Annotated section 40-23-101(c), the trial court erred by not applying pretrial jail credit to his six-year sentence for the sale of cocaine. Following our review of the record and the parties' briefs, we conclude that the trial court did not have jurisdiction to rule on the Appellant's motion because the proper avenue for relief regarding the application of his pretrial jail credit is through the Uniform Administrative Procedures Act, Tennessee Code Annotated sections 4-5-101 to -325. Consequently, we vacate the trial court's order denying the Appellant's motion. We dismiss the appeal.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Vacated;  
Appeal Dismissed**

DAVID H. WELLES, J., delivered the opinion of the court, in which JERRY L. SMITH and JOHN EVERETT WILLIAMS, JJ., joined.

Thomas Anderson, Jr., Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; Cameron L. Hyder, Assistant Attorney General; Ronald L. Davis, District Attorney General; and Derek K. Smith, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

**Factual and Procedural Background**

On May 6, 1999, the Appellant pled guilty to two counts of the sale of cocaine, Class C felonies, and he was sentenced as a Range III, persistent offender to consecutive terms of ten years in the Department of Correction. He appealed, and this Court reversed the trial court's judgments, finding that his guilty pleas were not entered voluntarily and intelligently. See State v. Thomas Anderson, Jr., No. M1999-01384-CCA-R3-CD, 2000 WL 1277366 (Tenn. Crim. App., Nashville,

Aug. 31, 2000). On remand, the Appellant pled guilty in case number II-398-102B to the offense of sale of cocaine and was sentenced as a Range II, multiple offender to six years in the Department of Correction. Judgment was entered on June 26, 2002, and his six year sentence was ordered to be served consecutively with a sentence he was already serving in case number II-194-10-A. An amended judgment<sup>1</sup> for the same offense imposing an identical sentence was entered on September 5, 2002.

More than four years later, on March 19, 2007, the Appellant filed a motion to receive jail credit in the trial court asserting that it had “mistakenly failed to credit the [Appellant] for the time spent in the Williamson County Jail prior to the imposition of his sentence, through oversight or omission.” The trial court entered an order denying the Appellant’s motion based on a letter from an officer of the Board of Probation and Parole stating that the jail credit requested by the Appellant had been properly applied to case number II-194-10-A. Subsequently, the Appellant filed another motion to receive jail credit in the trial court on April 23, 2007. In a more comprehensive and detailed order, the trial court again denied the motion, finding that the jail credit at issue was applied to case number II-194-10-A<sup>2</sup> and that if the credit was also applied to the consecutive sentence in case number II-398-102B, the Appellant would improperly receive “double credit.”

The Appellant appealed.

### **Analysis**

On appeal, the Appellant argues that the trial court erred in failing to grant him pretrial jail credit because he “was not given credit for time served in the Williamson County Jail and the Tennessee Department of Corrections prior to the imposition of the original sentence or when the case was remanded back to the trial court and [he] was sentenced again.” The State counters that the trial court lacked jurisdiction to hear the Appellant’s motion for pretrial jail credit.<sup>3</sup> We agree with the State.

The Appellant is correct that pursuant to Tennessee Code Annotated section 40-23-101(c), a trial court must allow for pretrial jail credit when sentencing a criminal defendant. Tenn. Code Ann. § 40-23-101(c); see also *Stubbs v. State* 393 S.W.2d 150, 154 (Tenn. 1965) (holding that it is mandatory under this provision that pretrial jail credit be awarded). However, a trial court’s

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<sup>1</sup> The only substantive alteration in the amended judgement appears to be the entry of a different social security number for the Appellant.

<sup>2</sup> The Appellant’s convictions in case number II-194-10-A were affirmed by this Court. See State v. Anderson, 985 S.W.2d 9 (Tenn. Crim. App. 1997), perm. to app. denied, (Tenn. Dec. 14, 1998). According to the trial court’s second order dismissing the Appellant’s motion for pretrial jail credit, he committed the sale of cocaine offense while free on an appeal bond granted in case number II-194-10-A, which is why the sentences were ordered to be served consecutively. In addition, the trial court’s order of dismissal states that he had been paroled on January 21, 2003, but was found to have violated the conditions of his parole on June 1, 2006.

<sup>3</sup> The State further asserts that in any event, the trial court properly found that the jail credits were applied to a separate, previous conviction.

judgment generally becomes final thirty days after entry unless a defendant files a timely notice of appeal or a specified post-trial motion. State v. Moore, 814 S.W.2d 381, 382 (Tenn. Crim. App. 1991)); see also Tenn. R. App. P. 4(a).

Moreover, after a judgment has become final, the trial court retains jurisdiction to modify a sentence only while a defendant is being held in the local jail or workhouse or is waiting to be transferred to the Department of Correction. Barabbas A. Brown v. State, No. E2004-01487-CCA-R3-CD, 2005 WL 74095, at \*1 (Tenn. Crim. App., Knoxville, Jan. 13, 2005) (citing Tenn. Code Ann. §§ 40-35-212(c), -314(c)). Accordingly, this Court has repeatedly stated that once a trial court's judgment has become final and an inmate "is in the custody of [the Department of Correction], the proper avenue to address sentence reduction credits is through the Administrative Procedures Act (APA), [Tenn. Code Ann.] § 4-5-101 et seq." State v. Henry, 946 S.W.2d 833, 834 (Tenn. Crim. App. 1997) (citations omitted); see also Brown, 2005 WL 74095, at \*2; State v. Stephen Mullican, No. M2000-207-CCA-R3-CD, 2000 WL 1278170, at \*1 (Tenn. Crim. App., Nashville, Sept. 8, 2000); State v. Frederick Cavitt, No. E1999-00304-CCA-R3-CD, 2000 WL 964941, at \*2 (Tenn. Crim. App., Knoxville, July 13, 2000); Paul G. Hull v. State, No. 02C01-9605-CC-00183, 1997 WL 346215, at \*1 n.4 (Tenn. Crim. App., Jackson, June 24, 1997); Larry Ray Fuller v. State, No. 02C01-9603-CR-00075, 1997 WL 206772, at \*1-2 (Tenn. Crim. App., Jackson, Apr. 28, 1997). But cf. State v. Greg Smith, No. E2003-01092-CCA-R3-CD, 2004 WL 305805 (Tenn. Crim. App., Knoxville, Feb. 18, 2004) (Tipton, J., concurring) (opining that under certain circumstances trial courts retain the power to correct the awarding of pretrial jail credits).

In this case, the Appellant's first motion for an award of pretrial jail credit was filed more than four years after the trial court's amended judgment had become final and he had been placed in the custody of the Department of Correction. As such, the trial court did not have jurisdiction to adjudicate the Appellant's motion. See Mullican, 2000 WL 1278170, at \*1.

### **Conclusion**

Based on the foregoing authorities and reasoning, we vacate the order of the trial court denying the Appellant's motions for pretrial jail credit. We dismiss this appeal.

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DAVID H. WELLES, JUDGE